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Total Number of Pages in This Submission

6

Application Number

10/763,807

Filing Date

1/22/2004

First Named Inventor

Shanler, et al

Art Unit

1617

Examiner Name

NYA

Attorney Docket Number

10447

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**TECH CENTER** 1600/2900**ENCLOSURES (Check all that apply)**

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<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
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<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	REQUEST FOR INTERFERENCE BETWEEN APPLICATIONS PURSUANT TO 37 C.F.R. §1.604
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> Landscape Table on CD	
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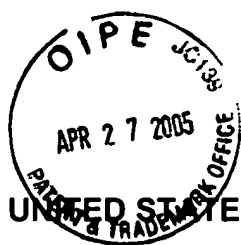
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re nonprovisional patent application of:

Stuart D. Shanler and Andrew Ondo

Group Art Unit: 1617

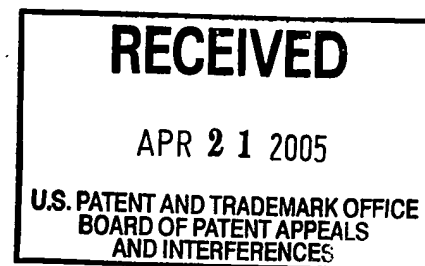
Application No: 10/763,807

Examiner Name: unknown

For: METHOD AND THERAPEUTIC/COSMETIC TOPICAL COMPOSITIONS  
FOR THE TREATMENT OF ROSACEA AND SKIN ERYTHEMA USING  $\alpha_1$ -  
ADRENOCEPTOR AGONIST

Filing Date: JANUARY 22, 2004

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Mail Stop Interference



**Request for Interference Between Applications Pursuant to 37 C.F.R. §1.604**

Dear Sir:

The Applicants request an interference between their nonprovisional application 10/763,807, filed January 22, 2004, and the published application 2004/0242588 of Dejovin et al., filed May 25, 2004, under the provisions of 37 C.F.R. §1.603.

Under 37 C.F.R. §1.603, an interference may be declared between two or more applications if "...the examiner is of the opinion that there is interfering subject matter claimed in the applications which is patentable to each applicant subject to a judgment in the interference. The interfering subject matter shall be defined by one or more counts. Each application must contain, or be amended

to contain, at least one claim that is patentable over the prior art and corresponds to each count. All claims in the applications which define the same patentable invention as a count shall be designated to correspond to the count."

The Applicants believe their nonprovisional application 10/763,807 and published application 2004/0242588 claim the same patentable invention, as defined by 35 U.S.C. 135, which is patentable to each applicant subject to a judgment in the interference. Each application claims a method for treating the symptoms of the skin disease rosacea by the topical use of a composition containing at least one compound known to be an  $\alpha$ -adrenoceptor agonist. In this regard the two inventions are inherently identical. However, the mechanisms and activities of the compositions described in both nonprovisional application 10/763,807 and published application 2004/0242588 are different. Dejovin et al. claim that the compounds oxymetazoline, tetrahydrozoline, nephezoline, xylometazoline, and phenylephrine have target specificity for  $\alpha_2$ -adrenoceptors, whereas the Applicants claim that these compounds have target specificity for  $\alpha_1$ -adrenoceptors.

Furthermore, no method for the treatment of the symptoms of rosacea, using oxymetazoline, tetrahydrozoline, nephezoline, xylometazoline, or phenylephrine to, is described in Dejovin et al.'s provisional application 60/473,611. Dejovin et al.'s published application is a continuation in part in which the critical subject matter is added. Therefore, Dejovin et al. may not claim priority from their provisional application for these methods claimed in their published application.

Applicants also believe that the activity of the compounds upon  $\alpha_1$ -adrenoceptors, rather than  $\alpha_2$ -adrenoceptors, causes the desired vasoconstriction. No matter which adrenoceptor is acted upon, the two inventions are inherently identical because each claims a method where the same compounds are used in the same manner to treat the same symptoms of rosacea.

The Applicants have no knowledge of any other prior art either describing or anticipating this method for the treatment of rosacea. The count required under 37 C.F.R. §1.603 and 37 C.F.R. §1.604 is listed below.

Additionally, M.P.E.P. 2303 states that interferences will not be declared between pending applications if the effective filing dates of the applications are more than three months for inventions of a "simple character" and six months for inventions in other cases. In this case the Applicants' nonprovisional application 10/763,807, has an effective filing date of January 22, 2004, whereas Dejovin et al.'s published application 2004/0242588 was filed four months and three days later on May 25, 2004. The Applicants argue for the declaration of an interference in this case because the patentable invention is not of a "simple character" and the difference between the effective filing dates are within the six month limit.

### **The Applicants' Proposed Count**

1. A method for treating rosacea comprising administering topically to said subject, for such period of time as is required to elicit the desired therapeutic response, a therapeutically or cosmetically effective amount of at least one  $\alpha_1$ -adrenoreceptor agonist.

### CONCLUSION

In view of the foregoing count, the Applicants request that an interference be declared between their nonprovisional application 10/763,807 and the published application 2004/0242588 of Dejovin et al. under the provisions of 37 C.F.R. §1.603.

If the Examiner has any questions regarding the foregoing request for an interference, or if the prosecution of this application could be furthered by a telephone interview, the Examiner is requested to telephone the Applicants' undersigned attorney.

Respectfully submitted,

By:   
Scott J Fields  
Registration No. 32,857

Dated: 4/19/05

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